

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LORRAINE SPAIN and WARANNETTE
TUGGLE, *individually and on behalf of others*
similarly situated,

Plaintiffs,

v.

KINDER STUFF 2010 LLC, SUZY “DOE,”
“JANE” GRAY and “JANE” LESLIE,

Defendants.

MEMORANDUM & ORDER
14-CV-2058 (MKB) (MDG)

MARGO K. BRODIE, United States District Judge:

Plaintiffs Lorraine Spain and Warannette Tuggle commenced the above-captioned action on April 1, 2014, against Defendants Kinder Stuff 2010 LLC (“Kinder Stuff”), Suzy “Doe,” “Jane” Gray and “Jane” Leslie. (Docket Entry No. 1.) Plaintiffs allege violations of the Fair Labor Standards Act (“FLSA”), 28 U.S.C. § 201 *et seq.*, the New York Labor Law (“NYLL”) § 650 *et seq.*, and the New York Codes, Rules and Regulations (“NYCRR”) § 142-2.4. Although properly served with the summons and Complaint, (Docket Entry No. 5), Kinder Stuff failed to appear in this action.¹ Plaintiffs sought and obtained a notice of default against Kinder Stuff. (Docket Entry Nos. 8–10.) Plaintiffs subsequently moved for a default judgment. (Docket Entry No. 14.) By Report and Recommendation dated September 10, 2014 (“R&R”), Magistrate Judge Marilyn D. Go recommended that the Court grant Plaintiffs’ motion for default judgment against Kinder Stuff in the amount of \$38,850.00, as follows: (1) in favor of Tuggle for \$14,175.00 (consisting of \$4725.00 in overtime wages plus \$9450.00 in liquidated damages); (2)

¹ There is no indication that Suzy “Doe,” “Jane” Gray or “Jane” Leslie was served with the summons and complaint in this action, and they have not appeared in this action.

in favor of Spain for \$21,645.00 (consisting of \$7215.00 in overtime wages plus \$14,430.00 in liquidated damages); (3) attorneys' fees of \$2340.00; and (4) \$690 in costs. (R&R 19, Docket Entry No. 15.) Judge Go recommended no award of pre-judgment interest, as FLSA liquidated damages were awarded for the same base pay.² (R&R 15.) Judge Go further recommended that all claims against Suzy "Doe," "Jane" Gray and "Jane" Leslie be dismissed for failure to identify and serve defendants. (*Id.*) No party has objected to the R&R, and the time for doing so has passed.

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Failure to object to a magistrate judge's report and recommendation within the prescribed time limit 'may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.'" *Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate

² Plaintiffs requested an award of interest, generally. (Beckwith Aff. in Support of Pls. Mot. for Default J. ¶ 25, Docket Entry No. 14-2.) While neither Judge Go nor Plaintiffs specifically addressed post-judgment interest, the Court notes that Plaintiffs are entitled to post-judgment interest on the full amount of their recovery, pursuant to 28 U.S.C. § 1961(a). *See Charvac v. M & T Project Mgrs. of N.Y., Inc.*, No. 12-CV-5637, 2015 WL 5518348, at *2 (E.D.N.Y. Sept. 17, 2015) (order adopting report and recommendation); *Cardoza v. Mango King Farmers Mkt. Corp.*, No. 14-CV-3314, 2015 WL 5561033, at *13 (E.D.N.Y. Sept. 1, 2015), *report and recommendation adopted*, 2015 WL 5561180 (E.D.N.Y. Sept. 21, 2015).

review of a decision in a magistrate judge's report and recommendation if the party fails to file timely objections designating the particular issue.").

The Court has reviewed the unopposed R&R, and, finding no clear error, the Court adopts Judge Go's R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1). Plaintiffs' motion for a default judgment against Defendant Kinder Stuff is granted. Defendants Doe, Gray and Leslie are dismissed from this action as Plaintiffs have failed to identify and serve them. The Clerk of the Court is directed to enter default judgments in the amounts set forth above, and to close this case.

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge

Dated: September 29, 2015
Brooklyn, New York